

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.8683 OF 2007**

M/s.Triumph Nuclear Medicine & Research Centre..Petitioners

Vs.

The Union of India & Ors.

.....Respondents

Mr. V.R. Sridharan with Mr. Prakash Shah i/b. PDS Legal for  
the Petitioners.

Mr. A.J. Rana, Senior Advocate with Mr. Y.R. Mishra with  
Mr. A.D. Dubey i/b. H.P. Chaturvedi for Union of India.

**CORAM : F.I. REBELLO &**

**R.S. MOHITE, JJ.**

**DATED : 6TH DECEMBER 2007**

**P.C.**

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Rule. Heard forthwith.

2. On the facts and circumstances we are clearly of the  
opinion that in the instant case what would be applicable  
would be Notification No.65/88 dated 1st March, 1988. A  
duty, therefore, lay on the Authority irrespective whether  
the petitioners had applied under Notification No.65/88 to  
consider the same. This view finds support from the  
judgment of the Supreme Court in Share Medical Care vs.  
Union of India & Ors., 2007 (4) SCC 573. We may gainfully  
refer para.13 of the said judgment which read as follows:-

"13. Allowing the appeal and setting aside the  
order, this Court held that if no time is fixed for  
the purpose of getting benefit under the exemption  
notification, it could be claimed at any time. If  
the notification applies, the benefit thereunder must

be extended to the appellant. The Court held that the authorities as well as the Tribunal were not right in holding that the appellant ought to have claimed the benefit of the notification at the time of filing of classification lists and not at a subsequent stage. The Court then stated: (SCC P. 150, para 12)

"There can be no doubt that the authorities functioning under the Act must, as are duty-bound, protect the interest of the Revenue by levying and collecting the duty in accordance with law--no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly." (emphasis supplied).

There is no dispute that in the instant case the Tribunal does have jurisdiction to condone the delay. The judgment of this Court in Customs Appeal No.22 of 2004 in the case of **Commissioner of Customs (Import) vs. M/s.Wockhardt Hospital & Heart Institute, 2006 (200) E.L.T. 15 (Bom.)** was decided on 28th April, 2006 whereas the petitioners had imported the goods as far back as in the year 1992. Considering the above, in our opinion, the cause shown would amount to sufficient cause and consequently the Application by the petitioners herein for condonation of delay had to be accepted. Accordingly delay is condoned. The impugned order is set aside and the matter is remanded to the

Tribunal for deciding the matter afresh in the light of what  
we have set out in the earlier part of the order.

. Rule made absolute accordingly. No order as to  
costs.

**(R.S.MOHITE, J.)**

**(F.I. REBELLO, J)**